

RESOLUTION NO. 11-04

RESOLUTION OF THE CALIFORNIA INFRASTRUCTURE AND ECONOMIC DEVELOPMENT BANK APPROVING INFRASTRUCTURE STATE REVOLVING FUND PROGRAM FINANCING NOT TO EXCEED \$1,000,000 FOR MCKINLEYVILLE COMMUNITY SERVICES DISTRICT

WHEREAS, the McKinleyville Community Services District ("Applicant") has submitted an application ("Application") to the California Infrastructure and Economic Development Bank ("I-Bank") requesting \$1,000,000 Infrastructure State Revolving Fund ("ISRF") Program financing for the Ramey Pump Station Upgrade Project ("Project"); and

WHEREAS, the Project meets all eligibility requirements contained in Government Code Section 63000 *et seq.* ("Act") and the Criteria, Priorities and Guidelines ("Criteria") for the ISRF Program; and

WHEREAS, pursuant to Federal tax law, any funds provided to the Applicant by the I-Bank for the purpose of financing costs associated with the Project on a long-term basis using proceeds of tax-exempt bonds previously issued by the I-Bank may reimburse the Applicant for certain expenditures paid by the Applicant in connection with the Project ("Reimbursable Expenditures") prior to the execution of any financing agreement between the I-Bank and the Applicant.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the California Infrastructure and Economic Development Bank ("Board"), as follows:

Section 1. Based upon information presented at the meeting where adoption of this resolution was presented and the staff report presented to the Board, the Board makes the following findings:

(a) Applicant meets the definition of "sponsor" pursuant to Government Code Section 63010 (u) and is thus an eligible recipient of financing;

(b) The Project meets the definition of "public development facility" pursuant to Government Code Section 63010(q) and is thus an eligible project to be financed;

(c) The categories of Project costs proposed to be paid with ISRF Program funds meet the definition of "Costs" pursuant to Government Code Section 63010(f) and thus are eligible for ISRF Program financing;

(d) Applicant adopted a resolution consistent with the requirements of Government Code Section 63041;

(e) Applicant meets the "need for I-Bank financing" and "readiness to proceed" criteria contained in the Criteria;

(f) Applicant and Project are eligible for tax-exempt financing under Federal law, without an allocation of private activity bond volume cap as required in the Criteria;

(g) The Project will not result in a "business relocation" as defined in the Criteria;

(h) The proposed financing complies with the underwriting criteria and sources of payment specified in the Criteria; and

(i) The proposed Project is financially feasible, with all Project funding sources identified and committed.

Section 2. The Board hereby approves providing financing from ISRF Program funds to the Applicant in an amount not to exceed \$1,000,000, subject to the execution of a financing agreement between the I-Bank and the Applicant pursuant to the terms and conditions specified in Attachment A to this resolution, and provided that the reimbursable costs are consistent with this resolution.

Section 3. The Chair of the Board ("Chair") or the Executive Director of the I-Bank ("Executive Director"), or, if authorized by the Executive Director, the Secretary of the Board, each acting alone, is authorized to execute all documents, certificates and other written agreements reasonably necessary to effectuate the financing of the Project authorized by this resolution. The authority to execute financing documents shall expire automatically two hundred ten (210) days from the adoption of this resolution, or at such later date approved by the Executive Director not later than the date three hundred sixty (360) days of the adoption of this resolution.

Section 4. This resolution and the Board's approval do not constitute an unconditional commitment to finance the Project, but instead this resolution sets forth conditions that shall be met prior to the execution by the I-Bank of any financing agreement between the I-Bank and the Applicant, and the terms and conditions that shall be contained in any such agreement. The financing agreement shall also include those conditions and agreements on the part of the Applicant that, in the best judgment of the Chair or the Executive Director, as the party signing such agreements on behalf of the I-Bank, are necessary or reasonable to adequately protect the interests of the I-Bank. Attachment A sets forth minimum terms and conditions to the execution of any such agreement and does not contain conditions of sufficient specificity to constitute a commitment to finance.

Section 5. The Board hereby declares its reasonable official intent to use proceeds of tax-exempt bonds to reimburse the Applicant for the Reimbursable Expenditures as authorized by this resolution.

Section 6. This resolution shall take effect from and after its adoption.

PASSED, APPROVED, AND ADOPTED at a meeting of the Board of Directors of the California Infrastructure and Economic Development Bank on March 1, 2011, by the following vote:

AYES: REYES, LUJANO, JIMENEZ, LOPEZ, RICE

NOES: NONE

ABSENT: NONE

ABSTAIN: NONE

By: Stanton C. Hazelroth
Stanton C. Hazelroth, Executive Director

ATTEST

By: Roma Cristia-Plant
Roma Cristia-Plant,
Secretary of the Board of Directors

ATTACHMENT A

1. **Applicant/Borrower:** McKinleyville Community Services District.
2. **Project:** Ramey Pump Station Upgrade Project.
3. **Amount of Financing:** Not to exceed \$1,000,000.
4. **Maturity:** Not to exceed 20 years.
5. **Funding Availability:** ISRF Program financing commitment is subject to the availability of funds from either, or a combination of, proceeds of a revenue bond or I-Bank equity funds. The Borrower shall execute the ISRF Program financing agreement within 210 days of I-Bank Board's approval of a resolution authorizing the proposed financing, or the commitment of funds may be cancelled by the I-Bank.
6. **Repayment/Security:** Subordinate lien on net System revenues and the System's water enterprise fund (Fund).
7. **Interest Rate:** 67% of Thompson's Municipal Market Data Index for an "A" rated tax-exempt security with a weighted average life similar to the I-Bank financing based on the rates on February 1, 2011.
8. **Fees:** Financing origination fee of 0.85% of the I-Bank financing and an annual fee of 0.30% of the outstanding principal balance.
9. **Type of Financing Agreement:** Installment Sale Agreement.
10. **Financing Agreement:** The Installment Sale Agreement shall include, among other things, the following provisions:
 - a. Borrower shall maintain rates and charges and, if necessary, a rate stabilization fund in an amount sufficient to ensure 1.20 times aggregate annual debt service ratio for senior and parity obligations.
 - b. Net System revenues may not be pledged to secure future financings on a basis senior to the pledge provided to secure the ISRF Program Financing.
 - c. Net System revenues may be pledged to secure future financings on a parity basis with the ISRF Program financing if net System revenues (adjusted for adopted rate increases and system expansion) will provide a minimum future debt service coverage of 1.20 times maximum annual debt service on all outstanding senior and parity debt, inclusive of the proposed financing.
 - d. Net System revenues may be pledged to secure future financings on a subordinate basis to the ISRF Program financing or on an unsecured basis if net System revenues (adjusted for adopted rate increases and System expansion) will provide a minimum aggregate future debt service coverage of 1.10 times maximum annual debt service on all outstanding debt payable from net System revenues, inclusive of the proposed financing.
 - e. Borrower shall be authorized to prepay all or a portion of the outstanding principal balance according to the following: 102% of the outstanding principal balance if the prepayment date is on or after ten years, but less than eleven years, from the effective date of the Agreement, or 100% of the outstanding principal amount of the I-Bank bonds to which the Borrower's loan is pledged as repayment and scheduled to be called for redemption as a result of the prepayment plus accrued interest on the bonds to be redeemed as of the date scheduled for redemption (Redemption Amount), whichever is greater; 101% of the outstanding principal balance if the prepayment date is on or after eleven years, but less than twelve years, from the effective date of the Agreement or the Redemption Amount, whichever is greater; or without premium if the prepayment date is twelve years or more from the effective date of the Agreement or the Redemption

- Amount, whichever is greater. The Borrower may on any date provide for a legal defeasance of the principal amount outstanding and any additional payment then due.
- f. Borrower shall agree to indemnify I-Bank and its directors, officers and employees from any liability arising from the Installment Sale Agreement or from construction or operation of the Project.
- 11. Conditions Precedent to Agreement Execution:** Receipt by I-Bank of:
- Evidence acceptable to the I-Bank of the approval, establishment and funding of a rate stabilization fund in the amount of \$60,000.
 - An adopted Borrower resolution authorizing the execution and delivery of the Installment Sale Agreement and approving certain other matters in connection therewith.
 - An opinion of legal counsel to the Borrower that the Borrower has the legal authority to enter into the Installment Sale Agreement, that there is no litigation currently pending or threatened that would in any way affect pledged revenues, that the Installment Sales Agreement is a legal, binding and enforceable agreement of the Borrower, and that the Borrower is not in default of any agreement or obligation secured by the revenues of the System.
 - A Tax Certificate, executed by Borrower.
- 12. Conditions Precedent to Disbursement:** The conditions to each disbursement of I-Bank funds shall include but are not required to be limited to:
- A fully executed Installment Sale Agreement consistent with the terms hereof.
 - A certificate of the Borrower, executed by the Borrower's legal counsel or other individual acceptable to the I-Bank that the Borrower has:
 - obtained any and all lands, rights-of-ways, lot line adjustments, easements, and orders of possession, which are required for construction;
 - obtained all required construction permits; and
 - awarded all construction contracts necessary for the construction of the Project pursuant to competitive bidding requirements and Borrower's procedures normally required for similar construction projects; and that
 - Project costs are consistent with the Sources and Uses listed in the staff report recommending financial assistance for the Project presented to the I-Bank Board.
 - For each related construction contract:
 - A written statement by the Borrower, executed by the Borrower's legal counsel or other individual acceptable to the I-Bank that the contract:
 - requires payment of prevailing wage rates and compliance with Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the California Labor Code;
 - requires payment of workers' compensation insurance; and
 - includes applicable nondiscrimination provisions.
 - A copy of the fully executed construction contract.
 - A copy of the contractor's payment and performance bonds.
 - Documentation acceptable to the I-Bank that a rate stabilization account has been established and funded in the amount of \$60,000.
- 13. Conditions Precedent to Final Disbursement:** The conditions to final disbursement of I-Bank funds shall include but are not required to be limited to:
- Recorded Notice of Completion or other evidence of completion for each Project component.

- b. Lien waivers for the Project, or passage of the applicable statutory time periods for filing mechanics and other similar liens.
 - c. Certification that the Project has been completed in accordance with the approved plans and specifications, and that the completed Project is consistent with the definition of Project in the staff report recommending financial assistance for the Project presented to the I-Bank Board and is acceptable to the Borrower.
 - d. Certification that the Borrower has obtained all licenses and permits (including operating permits), and approvals from any governmental agency or authority having jurisdiction over the Borrower in connection with the Project.
- 14. Financial and Other Reporting Requirements:**
- a. Annual Borrower audited financial statements, due to the I-Bank within 210 days of fiscal year end.
 - b. Other information as the I-Bank may request from time to time.